

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Hancock Communications, Inc.	)	
	)	
Petition for FCC Approval and Agreement of	)	
Redefinition of the Service Area of United	)	
Telephone Company of Indiana, Inc. d/b/a Sprint	)	

To: Wireline Competition Bureau

**PETITION FOR APPROVAL AND AGREEMENT OF REDEFINITION OF UNITED  
TELEPHONE COMPANY OF INDIANA, INC.'S SERVICE AREA**

Hancock Communications, Inc. ("HCI"), pursuant to Section 214(e)(5) of the Communications Act of 1934, *as amended* ("Act"), and the Federal Communications Commission ("FCC") Rule 54.207, submits this petition for the FCC's approval of and agreement with the Indiana Utility Regulatory Commission's ("IURC") redefinition of United Telephone Company of Indiana, Inc. d/b/a Sprint's ("Sprint") service area. Specifically, HCI requests FCC approval of and agreement with the IURC's redefinition of Sprint's Indiana service area to include the Wilkinson and Knightstown wire centers as a separate service area. The redefinition will foster federal and state goals of encouraging competition in the telecommunications marketplace consistent with universal service to rural customers.

**I. BACKGROUND**

Section 214(e) of the Act provides that state commissions generally have authority to designate carriers that satisfy the requirements of the federal universal service rules as eligible

telecommunications carriers (“ETCs”) and to define their service areas. The “service area” of a rural telephone company (“RTC”) is defined as a geographic area established by the state commission. Specifically, Section 214(e) of the Act provides:

‘Service area’ means such company’s ‘study area’ unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under Section 410(c), establish a different definition of service area for such company.<sup>1</sup>

Therefore the Act, together with the FCC’s rules<sup>2</sup>, explicitly sets forth a process whereby a competitive carrier may be designated as an ETC for a service area that differs from that of an RTC, provided that the RTC’s service area is redefined.

In its *Recommended Decision*, the Federal-State Joint Board on Universal Service (“Joint Board”) outlined its concerns relative to redefining a rural telephone company’s service area.<sup>3</sup> These include: (1) minimizing rural “cream skimming”; (2) recognizing that the Act places rural telephone companies on a different competitive footing from other carriers; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level.<sup>4</sup> The FCC has stated that a state commission, when redefining a rural telephone company’s service area, must properly address these concerns.<sup>5</sup> The FCC and the Joint Board have also recognized that a strict rule requiring a competitive ETC to serve an

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<sup>1</sup> 47 U.S.C. § 214(e)(5).

<sup>2</sup> 47 C.F.R. § 54.207(b)

<sup>3</sup> *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, ¶¶ 172- 174 (1996) (“*Recommended Decision*”).

<sup>4</sup> *RCC Holdings, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 23532 (2002).

<sup>5</sup> *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia, Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 03-338 ¶ 41 (January 22, 2004) (“*Virginia Cellular Order*”).

area exactly matching an RTC's study area would preclude competitive carriers that fully satisfy ETC requirements from bringing the benefits of competition to consumers.<sup>6</sup>

FCC Rule 54.207 establishes a streamlined procedure for the FCC and states to act together to redefine RTC service areas. Using this procedure, the FCC and state commissions have applied the Joint Board's recommendations and redefined RTC service areas to permit the designation of competitive ETCs in those areas. Pursuant to Rule Section 54.207(c)(1), this petition includes: (1) the definition proposed by the state commission, and (2) the state commission's ruling or other official statement presenting the state commission's reasons for adopting its definition including an analysis that takes into consideration the Joint Board's recommendations.<sup>7</sup>

## **II. PROCEDURAL HISTORY**

In 2002, HCI, a facilities-based CLEC, filed a petition with the IURC for designation as an ETC, which was docketed by the IURC as its Cause No. 41052-ETC-42. The area for which HCI requested designation as an ETC included areas served by Sprint's Wilkinson wire center within Sprint's Indiana service area. Sprint, an RTC, intervened in the proceeding, but did not present evidence nor did it oppose the ETC designation requested by HCI. On September 4, 2002, the IURC issued an Order in that Cause designating HCI as an ETC as requested.

On June 18, 2004, HCI filed a second petition in IURC Cause No. 41052-ETC-42, requesting that the IURC modify and expand HCI's designated ETC service area ("HCI's ETC Area") to include an additional area (Kennard, Indiana community) served by Sprint's Wilkinson

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<sup>6</sup> See *Petition for Agreement With Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Port*, Memorandum Opinion and Order, CC Docket No. 96-45, 15 FCC Rcd 9921, 9927 (rel. Sept. 9, 1999).

<sup>7</sup> 47 C.F.R. § 54.207(c).

wire center, and an area (Knightstown, Indiana community) served by Sprint's Knightstown wire center. Pursuant to a procedural schedule established by the IURC, Sprint filed testimony that did not question the merits of HCI's request, but posited that before the IURC could grant HCI's request, the IURC and the FCC were required to redefine Sprint's "study area" in Indiana. Subsequently, HCI and Sprint entered into a Settlement Agreement by which HCI agreed, in effect, to amend its petition to request a redefinition of Sprint's service area, as necessary, to meet the FCC's requirements.

The IURC thereafter issued its Order on December 20, 2004 approving the Settlement Agreement (the "IURC Order"),<sup>8</sup> finding it was in the public interest to modify and expand HCI's ETC area as requested, and finding that Sprint's service area should be redefined to include its Wilkinson and Knightstown wire centers as a separate service area. The IURC further authorized and requested HCI to file a petition to obtain the FCC's approval of and agreement with this redefinition of Sprint's service area. Accordingly, HCI submits this petition to the FCC seeking the FCC's approval of and agreement with the IURC's redefinition of Sprint's service area to include the Wilkinson and Knightstown wire centers as a separate service area.

### **III. DISCUSSION**

HCI requests FCC approval of and agreement with the IURC's redefinition of Sprint's service area to include its Wilkinson and Knightstown wire centers as a separate service area. Pursuant to Rule Section 54.207(c), the IURC's analysis included consideration of the Joint Board's recommendations. Among other things, the IURC considered: (1) whether the competitive carrier is attempting to "cream skim" by only proposing to serve the lowest cost

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<sup>8</sup> A copy of the IURC Order is attached as Exhibit A and incorporated by reference in this petition.

exchanges; (2) the rural carrier's special status under the Act; and (3) the administrative burden a rural LEC would face by calculating its cost on a basis other than its entire study area.<sup>9</sup>

**A. HCI is Not Attempting to Cream Skim**

“Rural cream skimming” occurs when competitors serve only the low-cost high revenue customers in a rural telephone company's study area.<sup>10</sup> The IURC found that because HCI requested that its ETC area be expanded to include parts of Sprint's present service area that are not low-cost, high-density areas and because it markets its facilities-based local exchange service to residential and business customers alike, it is not attempting to either “cream skim” or “cherry pick” Sprint's service area.

In its *Virginia Cellular Order*, the FCC stated that cream skimming may be a concern when a competitor proposes to serve only the low-cost areas to the exclusion of high-cost areas in a rural telephone company's service area.<sup>11</sup> The FCC, therefore, analyzed the population densities of the affected wire centers in order to ensure that designating Virginia Cellular as an ETC in portions of rural LEC service areas would not result in the unintended effect of cream skimming.<sup>12</sup> The IURC conducted a similar analysis concerning Sprint's service area. The IURC referenced the uncontroverted evidence of record demonstrating that the population densities of those parts of Sprint's service area that HCI requested be included in its ETC service area are lower than the average population densities in the rest of Sprint's Indiana service area.

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<sup>9</sup> IURC Order at 5-6.

<sup>10</sup> *In the matter of Federal-State Joint Board on Universal Service, Highland Cellular Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 04-37 ¶ 26 (April 12, 2004) .

<sup>11</sup> *See Virginia Cellular Order* ¶¶ 32-33.

<sup>12</sup> *See id.* ¶¶ 34-35.

**B. The IURC Considered Sprint's Special Status under the Act**

In its Order, the IURC recognized that Sprint is a rural carrier. The IURC considered the special status of Sprint as a RTC. By finding HCI's requested enlargement of its ETC area to be in the public interest, the IURC duly recognized the special status of Sprint in determining that its service area should be redefined.<sup>13</sup> The IURC concluded that Sprint would not be harmed by the redefinition of its service area.<sup>14</sup>

**C. Redefining Sprint's Service Area will Not be Administratively Burdensome**

The IURC also considered whether Sprint would suffer an administrative burden by redefinition of its service area as requested, and found it would not. Specifically, the IURC in its Order stated that the expansion of HCI's ETC designated area will not impose any significant additional administrative burdens on Sprint.<sup>15</sup> In addition, when considering HCI's redefinition request, the IURC also weighed the benefits of increased competitive choice, the impact of the redefinition on the universal service fund, the unique advantages and disadvantages of HCI's competitive service offerings, HCI's commitments to quality facilities-based telephone service, and HCI's demonstrated ability to satisfy its obligation to serve its ETC area. The IURC found that its redefinition of Sprint's service area would not impose significant additional administrative burdens on Sprint.<sup>16</sup>

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<sup>13</sup> See IURC Order at 4-5.

<sup>14</sup> See IURC Order at 5-6.

<sup>15</sup> See IURC Order at 6.

<sup>16</sup> See *id.*

#### **IV. CONCLUSION**

For the foregoing reasons, HCI respectfully requests FCC approval of and agreement with the IURC's redefinition of Sprint's Indiana service area to include its Wilkinson and Knightstown wire centers as a separate service area.

Respectfully submitted,

HANCOCK COMMUNICATIONS, INC.

By: \_\_\_\_\_/s/\_\_\_\_\_

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Attorneys for Petitioner

January 12, 2005

## Exhibit A



ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

*[Handwritten signature]*  
*[Handwritten initials]*

IN THE MATTER OF THE PETITION OF )  
HANCOCK COMMUNICATIONS, INC. )  
TO MODIFY THE AREA FOR WHICH )  
IT IS DESIGNATED AS AN ELIGIBLE )  
TELECOMMUNICATIONS CARRIER TO )  
INCLUDE THE TOWNS OF KENNARD )  
AND KNIGHTSTOWN, INDIANA. )

CAUSE NO. 41052-ETC 42

APPROVED: DEC 15 2004

**BY THE COMMISSION:**

David E. Ziegner, Commissioner

Lorraine Hitz-Bradley, Administrative Law Judge

On June 18, 2004, Hancock Communications, Inc. ("Petitioner" or "HCI") filed its *Verified Petition for Modification* of the area within which it is designated as an eligible telecommunications carrier ("ETC") by this Commission's Order issued September 4, 2002, in this cause.

Following the filing of HCI's petition, Sprint Communications Company ("Sprint"), which remains an intervenor in this cause, filed testimony of Dr. Brian K. Staihr. At the same time, the Office of Utility Consumer Counselor ("OUCC") filed notice of its intent to not prefile testimony. Thereafter, Petitioner and Sprint entered into a settlement agreement, and Petitioner filed testimony of its president, Rex Pasko, relative to issues raised by Sprint's testimony and in support of the settlement agreement.

Pursuant to notice duly given as provided by law, and procedural orders and docket entries of the Commission, this matter was set for public hearing, and was heard, at 9:00 a.m., on December 3, 2004, in the Commission's offices at E-306 of the Indiana Government Center South, Indianapolis, Indiana 46204. At the hearing, the Verified Petition, Sprint's testimony, Petitioner's testimony, and the settlement agreement were offered and admitted into the record. No opposition to Petitioner's request for modification and expansion of its ETC area or to the settlement agreement was presented by any party to the proceedings, and no members of the general public appeared at the hearing or indicated opposition to the expansion of Petitioner's ETC area as proposed.

The Commission, having examined all of the evidence of the record and being duly advised in the premises, now finds:

1. **Notice and Jurisdiction.** Proper, legal and timely notice of the hearing in this Cause was given and published by the Commission as required by law. The proofs of publication of notice of the hearing have been incorporated into the official files of the Commission. Pursuant to the Telecommunications Act of 1996<sup>1</sup>, and 47 CFR 54.201, 47 CFR

<sup>1</sup> See 47 U.S.C. 214(e)(2).

54.203 and 47 CFR 54.207 of the Federal Communications Commission's ("FCC") rules, this Commission is authorized to designate ETCs and take such other actions as may be required to enable those so designated to apply for universal service support under 47 U.S.C. 254. The Commission, therefore, has jurisdiction over the parties and subject matter of this Cause.

2. **Petitioner's Characteristics and Relief Requested.** Petitioner is a "telecommunications carrier" as defined by 47 U.S.C. 3(a)(49). Petitioner provides competitive local exchange services in areas of Indiana as authorized by its Certificate of Territorial Authority issued to it by this Commission, including the Kennard and Knightstown communities in Indiana, pursuant to tariffs on file with the Commission. Petitioner markets its facilities-based local exchange services to both residential and business customers in rural communities. Petitioner requests that the area for which it is designated as an ETC be modified and expanded to include the Kennard and Knightstown communities as depicted by a map attached as Exhibit A to the petition, a copy of which is attached to and incorporated in this Order. The Knightstown community that Petitioner requests be included within its ETC area is within the Knightstown exchange of Sprint, i.e., an area served by Sprint's Knightstown "wire center," which has also been designated as a rural telecommunications company, and the Kennard community Petitioner requests be included in its ETC area is within Sprint's Wilkinson exchange. Petitioner's evidence indicates that it is not exclusively a reseller of Sprint's or any other facilities-based carrier's services, but that its local exchange services to the area it requests be included in its ETC area are provided through facilities owned or leased by Petitioner. Petitioner represented by its verified petition that, in addition to local exchange services required as a condition of receiving universal service support funds as an ETC, Petitioner also provides enhanced local exchange services to the area it requests be included within its ETC area. Those include Digital Subscriber Line ("DSL") broadband services, "CLASS" features (e.g., Caller Identification), custom calling features (e.g., call forwarding, call waiting, three-way calling, etc.), "Centrex"-type services, and Special Access.

3. **Requirements for ETC Designation.** Petitioner was previously designated as an ETC for areas adjacent to the Knightstown and Kennard communities by our 2002 Order in this Cause. Each ETC receiving federal universal service support is required by FCC Rule 54.101(b) to offer the following nine universal services or functionalities, which are described more fully in Rule 54.101(a):

- (1) Voice grade access to the public switched network;
- (2) Local usage;
- (3) Dual tone multi-frequency signaling or an equivalent;
- (4) Single-party service or its functional equivalent;
- (5) Access to emergency services;
- (6) Access to operator services;
- (7) Access to interexchange service;
- (8) Access to directory assistance;
- (9) Toll limitation for qualifying low-income customers.

In addition to offering the above nine universal services, ETCs are required by FCC Rules 54.405 and 54.411 to offer qualifying low-income customers both "Lifeline" and "Link Up" programs as a condition precedent to receiving federal universal service support. Finally, FCC Rule 54.201(d)(2) requires ETCs receiving federal universal service support to publicize

the availability of the nine universal services and the Lifeline and Link Up programs and the charges therefor using media of general distribution.

We have required other telecommunications carriers designated by us as ETCs to file a proposed Lifeline/Link Up tariff, and have found that requirement should also be applicable to Petitioner with respect to its ETC area so that it will meet all the requirements applicable to other telecommunications carriers designated as ETCs by this Commission. The Commission takes administrative notice that Petitioner has filed a Lifeline/Link Up tariff that shows that the net amount to be paid Petitioner by qualifying low-income customers for local telephone service has been reduced as required of all other telecommunications carriers designated by the Commission as ETCs.

4. **Settlement Agreement.** Petitioner's and Sprint's Stipulation and Settlement Agreement ("Settlement Agreement") was filed with testimony supporting it on November 23, 2004. The Settlement Agreement addresses the question raised by Sprint's testimony concerning whether Sprint's study area should or must be redefined as a condition precedent to expanding Petitioner's ETC area as requested. By their agreement, Petitioner and Sprint have agreed to a redefinition of Sprint's study area relative to the expansion of Petitioner's ETC area as requested. The Settlement Agreement avoids the need for litigation on that issue, and appears to be consistent with all provisions of the Telecommunications Act and FCC rules and regulations. The effect of the Settlement Agreement is that upon approval by this Commission and the FCC, Sprint's Indiana service area will be redefined as something other than its present study area that is a composite of all the areas served by its 90 exchanges or wire centers, located in various and sometimes non-contiguous parts of Indiana, and those parts of its present study area served by its wire centers that serve the same communities that are included in HCI's ETC area will become a separate Sprint service area.

5. **Evidence Presented.** Petitioner's petition, admitted into the record as Petitioner's Exhibit 1 and incorporated herein by reference, verifies that Petitioner provides all nine of the universal services or functionalities required by FCC Rule 54.101(b) within the areas it requests be included in its ETC area. The petition also verifies that Petitioner will provide Lifeline and Link Up programs to qualifying low-income customers in these additional areas as required by FCC Rules 54.405 and 54.411. By Petitioner's Exhibit 2, its testimony in response to Sprint's testimony and in support of the Settlement Agreement, the issue of whether this Commission must or should redefine Sprint's study area to provide for the expansion of Petitioner's ETC area as requested has been resolved, and no dispute among any of the parties exists for the Commission to resolve. Petitioner's verified petition and its testimony in support of the Settlement Agreement establish that the public interest will be served by inclusion of the Knightstown and Kennard communities depicted by the attached map within Petitioner's ETC area. Mr. Pasko testified that all of Petitioner's facilities within these areas were designed and constructed with short "loops" in digital equipment and switch software that makes it possible for Petitioner to provide high quality broadband services to all of its facilities based local exchange customers. We have previously found that it is in the public interest to designate Petitioner as an ETC, and the evidence presented in support of the requested expansion leads to the same conclusion here.

With respect to redefinition of Sprint's service area, Mr. Pasko testified that Petitioner's construction of facilities to provide competitive service offerings, and its receipt in appropriate

circumstances of federal universal service funds, would be frustrated by a Sprint service area comprised of all of Sprint's more than ninety exchanges throughout Indiana if that would prevent Petitioner from providing service in a part of that area as an ETC. He testified that those parts of the areas served by Sprint's wire centers that would be included in Petitioner's expanded ETC area are "low density, high cost" areas and that the average population density in these areas is approximately 32 persons per square mile while the average population density for the rest of Sprint's Indiana service area is approximately 46 persons per square mile based on the best information available to him. Mr. Pasko also testified that expansion of Petitioner's ETC area to include the Knightstown and Kennard communities would not constitute "cream skimming" or "cherry picking" of Sprint's local exchange customers. He testified that Petitioner does not intend to serve only business customers, or serve only "low cost" customers, that Petitioner has built out these areas so that almost every home can be served with voice and data local exchange service, and that Petitioner has marketed those residential services. He also testified that if Petitioner's service area is modified as requested, it will not have a significant impact on the federal universal service fund because of the total universal service fund distributions in the United States of \$4,538,225,000 in 2003. Sprint nationwide received \$549,641,732 and for its Indiana operations received \$3,204,300. In 2003, Petitioner received only \$5,320 in universal service funds, and he testified even if Petitioner were to achieve 100% penetration of the additional areas it requests be included within its ETC area, it might expect to receive approximately only \$3,200 more. Finally, the evidence indicates that the relief requested by Petitioner will not impose any significant additional administrative burdens on Sprint.

6. **Commission Findings.** Based on the evidence received at the December 3, 2004, hearing, we make the following findings:

We find that Petitioner has sufficiently satisfied the requirements of FCC Rule 54.101(b) for designation by this Commission as an ETC in the additional areas Petitioner requests be included within its total ETC area. Petitioner provides the nine universal services required by that rule for receipt of federal universal service support and has satisfied the requirements of FCC Rules 54.405, 54.411, and 54.201(d)(2) relating to the provision of Lifeline and Link Up programs in the areas it requests be included in its ETC area. Petitioner has satisfied all of the requirements for designation as an ETC in the expanded area that the Commission required of it with respect to its original ETC designation.

The settlement was the result of negotiations among the parties. The Commission has consistently observed that "Indiana law strongly favors settlement as a means of resolving contested proceedings." *Re Indianapolis Power & Light Co.*, (IURC 8/24/95), Cause No. 39936, p. 7 (citations omitted). The policy is consistent with expressions to the same effect by the Supreme Court of Indiana. *See, e.g., Mendenhall v. Skinner & Broadbent Co.*, 728 N.E.2d 140, 145 (Ind. 2000) ("The policy of the law generally is to discourage litigation and encourage negotiation and settlement of disputes.")

Nevertheless, State law imposes a somewhat different burden on administrative agencies reviewing settlements than may be the case with regard to civil courts:

[S]ettlement carries a different connotation in administrative law and practice from the meaning usually ascribed to settlement of civil actions in a court. While trial courts perform a more passive

role and allow the litigants to play out the contest, regulatory agencies are charged with a duty to move on their own initiative where and when they deem appropriate. Any agreement that must be filed and approved by an agency loses its status as a strictly private contract and takes on a public interest gloss. Indeed, an agency may not accept a settlement merely because the private parties are satisfied; rather, an agency must consider whether the public interest will be served by accepting the settlement.

*Citizens Action Coalition of Indiana, Inc. v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. App. 1996) (citations omitted).

Furthermore, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *United States Gypsum v. Indiana Gas Co.*, 735 N.E.2d 790 at 795 (Ind. 2000) (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission's own procedural rules require that settlements be supported by probative evidence. 170 I.A.C. 1-1.1-17(d). Therefore, before the Commission can approve the Settlement, we must determine whether the evidence in this Cause sufficiently supports the conclusion that the Settlement is reasonable, just and consistent with the purpose of Indiana Code § 8-1-2, and that such agreement serves the public interest.

We find that expansion of Petitioner's ETC area as requested is in the public interest, supporting the promotion of customer choice and economically efficient deployment of local exchange telecommunications infrastructure and new technologies. We therefore find that Petitioner's ETC area should be expanded to include the Knightstown and Kennard communities depicted by the attached map. However, we also find that Petitioner should promptly file notice with the Commission, with a copy to the Office of Utility Consumer Counselor, if any of the factors affecting Petitioner's eligibility or status as an ETC become subject to material change.

By its Order issued on November 5, 1997, in Cause No. 40785, this Commission approved a customer application form to be used by ETCs in determining whether a customer is qualified to participate in the Lifeline/Link Up programs. We find that Petitioner should require all participants in its Lifeline/Link Up programs to complete that form. Finally, we find that Petitioner should comply with any future orders issued by this Commission of generic and general applicability to ETCs and ETC designations.

With respect to redefinition of Sprint's service area to accommodate expansion of Petitioner's ETC area as requested, we find that Sprint's Indiana service area should be so redefined. In making this determination, we have weighed the benefits of increased competitive choice, the impact of inclusion of the Kennard and Knightstown communities within Petitioner's ETC area on the universal service fund, the unique advantages and disadvantages of Petitioner's competitive service offerings, Petitioner's commitments to quality facilities based telephone service and Petitioner's demonstrated ability to satisfy its obligation to serve its ETC area. We find that expansion of Petitioner's ETC area to include the Kennard and Knightstown communities of Indiana will not constitute either "cream skimming" or "cherry picking" of Sprint's local exchange customers, because Petitioner will not be serving only Sprint's "low cost" customers or business customers. We also find that expansion of Petitioner's ETC area

will not have a significant impact on the federal universal service fund, and that the expansion will not impose any significant additional administrative burdens on Sprint. We agree with the FCC that this Commission's first-hand knowledge of the rural areas in question uniquely qualifies us to consider the redefinition of Sprint's service area as agreed to by the Settlement Agreement, and to determine whether it should be approved. We also note that inclusion of less than all of the area served by a rural telephone company's wire centers in another LEC's ETC area is not without precedent<sup>2</sup>, and that the unique facts in this Cause are distinguishable from those in the FCC's Highland Cellular Order, FCC Docket No. 96-45. Therefore, and in light of all of these findings and the evidence of record to support them, we conclude and find that the Settlement Agreement and HCI's petition should be approved in their entirety as qualified herein. With regard to future citation of the settlement and Order, we find approval herein should be construed in a manner consistent with our findings in *In re Richmond Power & Light*, Cause No. 40434 (IURC 03/19/97).

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. The area within which Petitioner, Hancock Communications, Inc. is designated as an Eligible Telecommunications Carrier shall be and is hereby modified and expanded to include the Knightstown and Kennard communities as depicted by Exhibit A to Petitioner's petition, which is attached hereto and incorporated herein.
2. The Settlement Agreement between Petitioner and United Telephone Company of Indiana, Inc. d/b/a Sprint shall be and it is hereby in all things approved.
3. Subject to such concurrence and approval as may be required from the FCC, Sprint's Indiana service area is hereby redefined to include those parts of its present study area that are served by wire centers serving areas also included in HCI's ETC area in a separate service area.
4. Petitioner shall promptly file notice with the Commission, with a copy to the Office of Utility Consumer Counselor, if any of the factors affecting its eligibility or status as an Eligible Telecommunications Carrier are materially changed.
5. Petitioner shall comply with any future orders issued by this Commission of generic application to all telecommunications carriers designated as Eligible Telecommunications Carriers by the Commission.
6. The Commission's Secretary shall furnish a copy of the Order to the FCC and the Universal Service Administrative Company.
7. Petitioner is authorized and requested to petition the FCC to concur with the redefinition of Sprint's Indiana service area as set forth herein if and as required to give effect to the inclusion of parts of the areas served by Sprint's Wilkinson and Knightstown wire centers in Petitioner's ETC area pursuant to 47 CFR 47.207.

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<sup>2</sup> RCC Holdings ETC Designation Order, 17 FCC Rcd. at ¶¶ 34-15, 17.

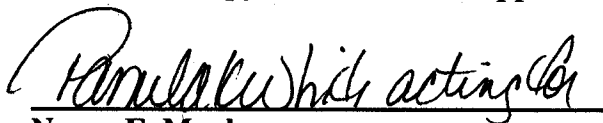
8. This Order shall be effective on and after the date of its approval.

**McCARTY, LANDIS, RIPLEY AND ZIEGNER CONCUR; HADLEY ABSENT:**

**APPROVED:**

DEC 15 2004

**I hereby certify that the above is a true  
and correct copy of the Order as approved.**

A handwritten signature in cursive script, appearing to read "Nancy E. Manley", is written over a horizontal line.

**Nancy E. Manley  
Secretary to the Commission**

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF )  
HANCOCK COMMUNICATIONS, INC. )  
TO MODIFY THE AREA FOR WHICH )  
IT IS DESIGNATED AS AN ELIGIBLE )  
TELECOMMUNICATIONS CARRIER TO )  
INCLUDE THE TOWNS OF KENNARD )  
AND KNIGHTSTOWN, INDIANA. )

CAUSE NO. 41052-ETC-42

IURC  
PETITIONER'S

EXHIBIT NO.

12-03-04

REPORTER

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement ("Settlement Agreement") is entered into this 22 day of November, 2004 by and between Hancock Communications, Inc. ("Petitioner" or "HCI") and the United Telephone Company, Inc. d/b/a Sprint ("Sprint") who stipulate and agree that this Settlement Agreement represents a fair and reasonable resolution of all of the issues in this Cause that may have been in dispute between them, subject to approval of this Settlement Agreement by a final Commission order in substantially the same form and content as the proposed form of order attached hereto and made a part hereof as Exhibit A (the "Final Order") without modification or further condition unacceptable to either of them. The terms and conditions of this Settlement Agreement are as follows:

1. Sprint does not oppose modification and enlargement of the area within which HCI is designated as an eligible telecommunications carrier ("HCI ETC area") as proposed by Petitioner and which, as modified, will result in an HCI ETC area that includes an additional portion of Sprint's Wilkinson exchange and a total HCI ETC area as depicted by the attached Exhibit B, subject to the following additional terms and conditions.

2. The Commission should redefine Sprint's Indiana study area, and the Federal Communications Commission ("FCC") should approve such redefinition if and as necessary to give effect to this modification and enlargement of HCI's ETC area, provided that no such



redefinition shall have the effect of reducing Sprint's local exchange service area which shall continue to include all of its present Wilkinson Exchange.

3. Neither HCI nor Sprint shall appeal, challenge or contest a Final Order entered in this Cause that approves the terms and conditions of this Stipulation and Settlement Agreement, and Sprint shall not oppose such FCC approval as may be required to give effect to this Settlement Agreement and the enlargement and modification of the HCI ETC area as requested by HCI.

4. This Settlement Agreement is solely a result of good faith and arms length compromise and settlement of issues unique to these proceedings and is without prejudice to and shall not constitute a waiver of any position that either HCI or Sprint may take with respect to any or all of the matters and issues resolved herein in any future regulatory or other proceedings. Neither this Settlement Agreement nor the Final Order shall be cited or used as an admission or precedent against either HCI or Sprint in this or any other proceeding before the Commission or any other state agency, federal agency or court except to the extent necessary to enforce and give effect to the terms of this Settlement Agreement.

5. HCI and Sprint agree that Petitioner's Verified Petition, Sprint's responsive testimony prefiled on September 10, 2004, and HCI's testimony in reply and in support of this Settlement Agreement filed contemporaneously herewith, constitute substantial evidence sufficient to support this Settlement Agreement and provide an adequate evidentiary basis upon which the Commission may make findings of fact and conclusions of law necessary for approval of this Settlement Agreement and issuance of the Final Order.

6. If the Commission does not approve this Settlement Agreement in its entirety by a Final Order as provided herein, this entire Settlement Agreement shall be null and void and

deemed withdrawn unless otherwise agreed to in writing by both HCI and Sprint, and HCI may file and present additional evidence in reply to Sprint's testimony filed September 10, 2004.

7. The undersigned counsel for HCI and Sprint are each fully authorized to execute this Settlement Agreement on behalf of the parties to be bound thereby.

HANCOCK COMMUNICATIONS, INC.

UNITED TELEPHONE COMPANY, INC.

d/b/a SPRINT

By: 

Harry J. Wallace  
Parr Richey Obremskey & Morton  
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Attorney for Hancock Communications,  
Inc.

By: 

Charles R. Mercer, Jr.  
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Indianapolis, IN 46204

Attorneys for United Telephone  
Company, Inc. d/b/a Sprint

I49678

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF )  
HANCOCK COMMUNICATIONS, INC. )  
TO MODIFY THE AREA FOR WHICH )  
IT IS DESIGNATED AS AN ELIGIBLE )  
TELECOMMUNICATIONS CARRIER TO )  
INCLUDE THE TOWNS OF KENNARD )  
AND KNIGHTSTOWN, INDIANA. )

CAUSE NO. 41052-ETC-42

**[SETTLING PARTIES' PROPOSED  
ORDER]**

APPROVED:

BY THE COMMISSION:

David E. Ziegner, Commissioner

Lorraine Hitz-Bradley, Administrative Law Judge

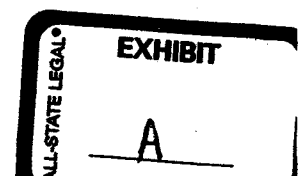
On June 18, 2004, Hancock Communications, Inc. ("Petitioner" or "HCI") filed its Verified Petition for Modification of the area within which it is designated as an eligible telecommunications carrier ("ETC") by this Commission's Order issued September 4, 2002, in this cause.

Following the filing of HCI's petition, Sprint Communications Company ("Sprint"), which had intervened in the 2004 proceedings in this Cause concerning designation of Petitioner as an ETC and remains an intervenor in this cause, and pursuant to procedural orders and docket entries of the Commission, filed testimony of Dr. Brian K. Staihr. At the same time, the Office of Utility Consumer Counselor ("OUCC") filed notice of its intent to not prefile testimony. Thereafter, Petitioner and Sprint entered into a settlement agreement, and Petitioner filed testimony of its president, Rex Pasko, relative to issues raised by Sprint's testimony and in support of the settlement agreement.

Pursuant to notice duly given as provided by law, and procedural orders and docket entries of the Commission, this matter was set for public hearing, and was heard, at \_\_\_\_\_ o'clock \_\_\_\_m. EST, on \_\_\_\_\_, \_\_\_\_\_, 2004, in the Commission's offices at E-306 of the Indiana Government Center South, Indianapolis, Indiana 46204, at which the Verified Petition, Sprint's testimony, Petitioner's testimony, and the settlement agreement were offered and admitted into the record. No opposition to Petitioner's request for modification and expansion of its ETC area or to the settlement agreement was presented by any party to the proceedings, and no members of the general public appeared at the hearing or indicated opposition to the expansion of Petitioner's ETC area as proposed.

The Commission, having examined all of the evidence of the record and being duly advised in the premises, now finds:

1. **Notice and Jurisdiction.** Proper, legal and timely notice of the hearing in this Cause was given and published by the Commission as required by law. The proofs of publication of notice of the hearing have been incorporated into the official files of the



Commission. Pursuant to the Telecommunications Act of 1996<sup>1</sup>, and 47 CFR 54.201, 47 CFR 54.203 and 47 CFR 54.207 of the Federal Communications Commission's ("FCC") rules, this Commission is authorized to designate ETCs and take such other actions as may be required to enable those so designated to apply for universal service support under 47 U.S.C. 254. The Commission, therefore, has jurisdiction over the parties and subject matter of this Cause.

2. **Petitioner's Characteristics and Relief Requested.** Petitioner is a "Telecommunications Carrier," as defined by 47 U.S.C. 3(a)(49). Petitioner provides competitive local exchange services in areas of Indiana as authorized by its Certificate of Territorial Authority issued to it by this Commission, including the Kennard and Knightstown communities in Indiana, pursuant to tariffs on file with the Commission. Petitioner markets its facilities-based local exchange services to both residential and business customers in rural communities. Petitioner requests that the area for which it is designated as an ETC (Petitioner's "ETC area") be modified and expanded to include the Kennard and Knightstown communities as depicted by a map attached as Exhibit A to the petition, a copy of which is attached to and incorporated in this Order. The Knightstown community that Petitioner requests be included within its ETC area is within the Knightstown exchange of Sprint, i.e., an area served by Sprint's Knightstown "wire center", which has also been designated as a rural telecommunications company, and the Kennard community Petitioner requests be included in its ETA area is within Sprint's Wilkinson's exchange. Petitioner's evidence indicates that it is not exclusively a reseller of Sprint's or any other facilities-based carrier's services, but that its local exchange services to the area it requests be included in its ETC area are provided through facilities owned or leased by Petitioner. Petitioner represented by its verified petition that, in addition to local exchange services required as a condition of receiving universal service support funds as an ETC, Petitioner also provides enhanced local exchange services to the area it requests be included within its ETC area. Those include Digital Subscriber Line ("DSL") broadband services, "CLASS" features (e.g., Caller Identification), custom calling features (e.g., call forwarding, call waiting, three-way calling, etc.), "Centrex"-type services, and Special Access.

3. **Requirements for ETC Designation.** Petitioner was previously designated as an ETC for areas adjacent to the Knightstown and Kennard communities by our 2002 Order in this Cause. Each ETC receiving federal universal service support is required by FCC Rule 54.101(b) to offer the following nine universal services or functionalities, which are described more fully in Rule 54.101(a):

- (1) Voice grade access to the public switched network;
- (2) Local usage;
- (3) Dual tone multi-frequency signaling or an equivalent;
- (4) Single-party service or its functional equivalent;
- (5) Access to emergency services;
- (6) Access to operator services;
- (7) Access to interexchange service;
- (8) Access to directory assistance;
- (9) Toll limitation for qualifying low-income customers.

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<sup>1</sup> See 47 U.S.C. 214(e)(2).

In addition to offering the above nine universal services, ETCs are required by FCC Rules 54.405 and 54.411 to offer qualifying low-income customers both "Lifeline" and "Link Up" programs as a condition precedent to receiving federal universal service support. Finally, FCC Rule 54.201(d)(2) requires ETCs receiving federal universal service support to publicize the availability of the nine universal services and the Lifeline and Link Up programs and the charges therefor using media of general distribution.

We have required other telecommunications carriers designated by us as ETCs to file a proposed Lifeline/Link Up tariff, and have found that requirement should also be applicable to Petitioner with respect to its ETC area so that it will be required to meet all the requirements applicable to other telecommunications carriers designated as ETCs by this Commission. The Commission takes administrative notice that Petitioner has filed a Lifeline/Link Up tariff that shows that the net amount to be paid Petitioner by qualifying low-income customers for local telephone service has been reduced as required of all other telecommunications carriers designated by the Commission as ETCs.

4. **Settlement Agreement.** Petitioner's and Sprint's Stipulation and Settlement Agreement ("Settlement Agreement") was filed with testimony supporting it on November \_\_\_\_\_, 2004. The Settlement Agreement addresses the question raised by Sprint's testimony concerning whether Sprint's study area should or must be redefined as a condition precedent to expand Petitioner's ETC area as requested. By their agreement, Petitioner and Sprint have agreed to a redefinition of Sprint's study area relative to the expansion of Petitioner's ETC area as requested. The Settlement Agreement avoids the need for litigation on that issue, and appears to be consistent with all provisions of the Telecommunications Act and FCC rules and regulations. The effect of the Settlement Agreement is that upon approval by this Commission and the FCC, Sprint's Indiana service area will be redefined as something other than its present study area that is a composite of all the areas served by its 90 exchanges or wire centers, located in various and sometimes non-contiguous parts of Indiana, and those parts of its present study area served by its wire centers that serve the same communities that are included in HCI's ETC area will become a separate Sprint service area.

5. **Evidence Presented.** Petitioner's petition, admitted into the record as Petitioner's Exhibit 1 and incorporated herein by reference, verifies that Petitioner provides all nine of the universal services or functionalities required by FCC Rule 54.101(b) within the areas it requests be included in its ETC area. The petition also verifies that Petitioner will provide Lifeline and Link Up programs to qualifying low-income customers in these additional areas as required by FCC Rules 54.405 and 54.411. By Petitioner's Exhibit 2, its testimony in response to Sprint's testimony and in support of the Settlement Agreement, the issue of whether this Commission must or should redefine Sprint's study area to provide for the expansion of Petitioner's ETC area as requested has been resolved, and no dispute among any of the parties exists for the Commission to resolve. Petitioner's verified petition and its testimony in support of the Settlement Agreement establish that the public interest will be served by inclusion of the Knightstown and Kennard communities depicted by the attached map within Petitioner's ETC area. Mr. Pasko testified that all of Petitioner's facilities within these areas were designed and constructed with short "loops" indigital equipment and switch software that makes it possible for Petitioner to provide high quality broadband services to all of its facilities based local exchange customers. We have previously found that it is in the public interest to designate Petitioner as an ETC, and the evidence presented in support of the requested expansion of its ETC area

demonstrates that the public interest will be no less well-served by the requested ETC area expansion.

With respect to redefinition of Sprint's service area, Mr. Pasko testified that Petitioner's construction of facilities to provide competitive service offerings, and its receipt in appropriate circumstances of federal universal service funds, would be frustrated by a Sprint service area comprised of all of Sprint's more than ninety exchanges throughout Indiana if that would prevent Petitioner from providing service in a part of that area as an ETC. He testified that those parts of the areas served by Sprint's wire centers that would be included in Petitioner's expanded ETC area are "low density, high cost" areas and that the average population density in these areas is approximately 32 persons per square mile while the average population density for the rest of Sprint's Indiana service area is approximately 46 persons per square mile based on the best information available to him. Mr. Pasko also testified that expansion of Petitioner's ETC area to include the Knightstown and Kennard communities would not constitute "cream skimming" or "cherry picking" of Sprint's local exchange customers. He testified that Petitioner does not intend to serve only business customers, or serve only "low cost" customers, that Petitioner has built out these areas so that almost every home can be served with voice and data local exchange service, and that Petitioner has marketed those residential services. He also testified that if Petitioner's service area is modified as requested, it will not have a significant impact on the federal universal service fund because of the total universal service fund distributions in the United States of \$4,538,225,000. in 2003. Sprint nationwide received \$549,641,732 and for its Indiana operations received \$3,204,300. In 2003, Petitioner received only \$5,320 in universal service funds, and he testified even if Petitioner were to achieve 100% penetration of the additional areas it requests be included within its ETC area, it might expect to receive approximately only \$3,200.00 more. Finally, the uncontroverted evidence is to the effect that the relief requested by Petitioner will not impose any significant additional administrative burdens on Sprint.

6. **Commission Findings.** Based on the uncontroverted evidence received at the \_\_\_\_\_, 2004, hearing, we make the following findings:

This Commission is authorized by Section 214(e)(2) of the Federal Telecommunications Act, as amended, to designate more than one carrier as an ETC for a service area so long as each carrier meets the federal requirements. We find that Petitioner has sufficiently satisfied the requirements of FCC Rule 54.101(b) for designation by this Commission as an ETC in the additional areas Petitioner requests be included within its total ETC area. Petitioner provides the nine universal services required by that rule for receipt of federal universal service support and has satisfied the requirements of FCC Rules 54.405, 54.411, and 54.201(d)(2) relating to the provision of Lifeline and Link Up programs in the areas it requests be included in its ETC area. Petitioner has satisfied all of the requirements for designation as an ETC in the expanded area that the Commission required of it with respect to its original ETC designation.

We find that expansion of Petitioner's ETC area as requested is in the public interest and is required not only for fair and reasonable competition by Petitioner with other certificated carriers in a competitively neutral manner, but also for the promotion of customer choice and economically efficient deployment of local exchange telecommunications infrastructure and new technologies. We therefore find that Petitioner's ETC area should be expanded to include the Knightstown and Kennard communities depicted by the attached map. However, we also find

that Petitioner should promptly file notice with the Commission, with a copy to the Office of Utility Consumer Counselor, if any of the factors affecting Petitioner's eligibility or status as an ETC becomes subject to material change.

By its Order issued on November 5, 1997, in Cause No. 40785, this Commission approved a customer application form to be used by ETCs in determining whether a customer is qualified to participate in the Lifeline/Link Up programs. We find that Petitioner should require all participants in its Lifeline/Link Up programs to complete that form. Finally, we find that Petitioner should comply with any future orders issued by this Commission of generic and general applicability to ETC designation in Cause Nos. 40785 and 41052.

With respect to redefinition of Sprint's service area to accommodate expansion of Petitioner's ETC area as requested, we find that Sprint's Indiana service area should be so redefined. In making this determination, we have weighed the benefits of increased competitive choice, the impact of inclusion of the Kennard and Knightstown communities within Petitioner's ETC area on the universal service fund, the unique advantages and disadvantages of Petitioner's competitive service offerings, Petitioner's commitments to quality facilities based telephone service and Petitioner's demonstrated ability to satisfy its obligation to serve its ETC area. We find that expansion of Petitioner's ETC area to include the Kennard and Knightstown communities of Indiana will not constitute either "cream skimming" or "cherry picking" of Sprint's local exchange customers because Petitioner will not be serving only Sprint's "low cost" customers or business customers. We also find that expansion of Petitioner's ETC area will not have a significant impact on the federal universal service fund, and that the expansion will not impose any significant additional administrative burdens on Sprint. We agree with the FCC that this Commission's first-hand knowledge of the rural areas in question uniquely qualifies us to consider the redefinition of Sprint's service area as agreed to by the Settlement Agreement, and to determine whether it should be approved. We also note that inclusion of less than all of the area served by a rural telephone company's wire centers in another LEC's ETC area is not without precedent<sup>2</sup>, and that the unique facts in this Cause are distinguishable from those in the FCC's Highland Cellular Order, FCC Docket No. 96-45. Therefore, and in light of all of these findings and the evidence of record to support them, we conclude and find that the Settlement Agreement and HCI's petition should be approved in their entirety as qualified herein.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. The area within which Petitioner, Hancock Communications, Inc. is designated as an Eligible Telecommunications Carrier shall be and is hereby modified and expanded to include the Knightstown and Kennard communities as depicted by Exhibit A to Petitioner's petition, which is attached hereto and incorporated herein.

2. The Settlement Agreement between Petitioner and United Telephone Company of Indiana, Inc. d/b/a Sprint shall be and it is hereby in all things approved.

3. Subject to such concurrence and approval as may be required from the FCC, Sprint's Indiana service area is hereby redefined to include those parts of its present study area

<sup>2</sup> RCC Holdings ETC Designation Order, 17 FCC Rcd. at ¶¶ 34-15, 17.

that are served by wire centers serving areas also included in HCI's ETC area in a separate service area.

4. Petitioner shall promptly file notice with the Commission, with a copy to the Office of Utility Consumer Counselor, if any of the factors affecting its eligibility or status as an Eligible Telecommunications Carrier are materially changed.

5. Petitioner shall comply with any future orders issued by this Commission of generic application to all telecommunications carriers designed as Eligible Telecommunications Carriers by the Commission.

6. The Commission's Secretary shall furnish a copy of the Order to the FCC and the Universal Service Administrative Company.

7. Petitioner is authorized and requested to petition the FCC to concur with the redefinition of Sprint's Indiana service area as set forth herein if and as required to give effect to the inclusion of parts of the areas served by Sprint's Wilkinson and Knightstown wire centers in Petitioner's ETC area pursuant to 47 CFR 47.207.

8. This Order shall be effective on and after the date of its approval.

**McCARTY, HADLEY, RIPLEY, SWANSON-HULL, AND ZIEGNER CONCUR:**  
**APPROVED:**

I hereby certify that the above is a true  
and correct copy of the Order as approved.

---

Nancy E. Manley,  
Secretary to the Commission

1-49788v5



Exhibit

KENNARD RD

CENTRAL

234

234

1902

GRANT CITY RD

234

234

2005

TOWN OF KENNARD

KENNARD RD

2305

BOUNDARY

ASPT

3005

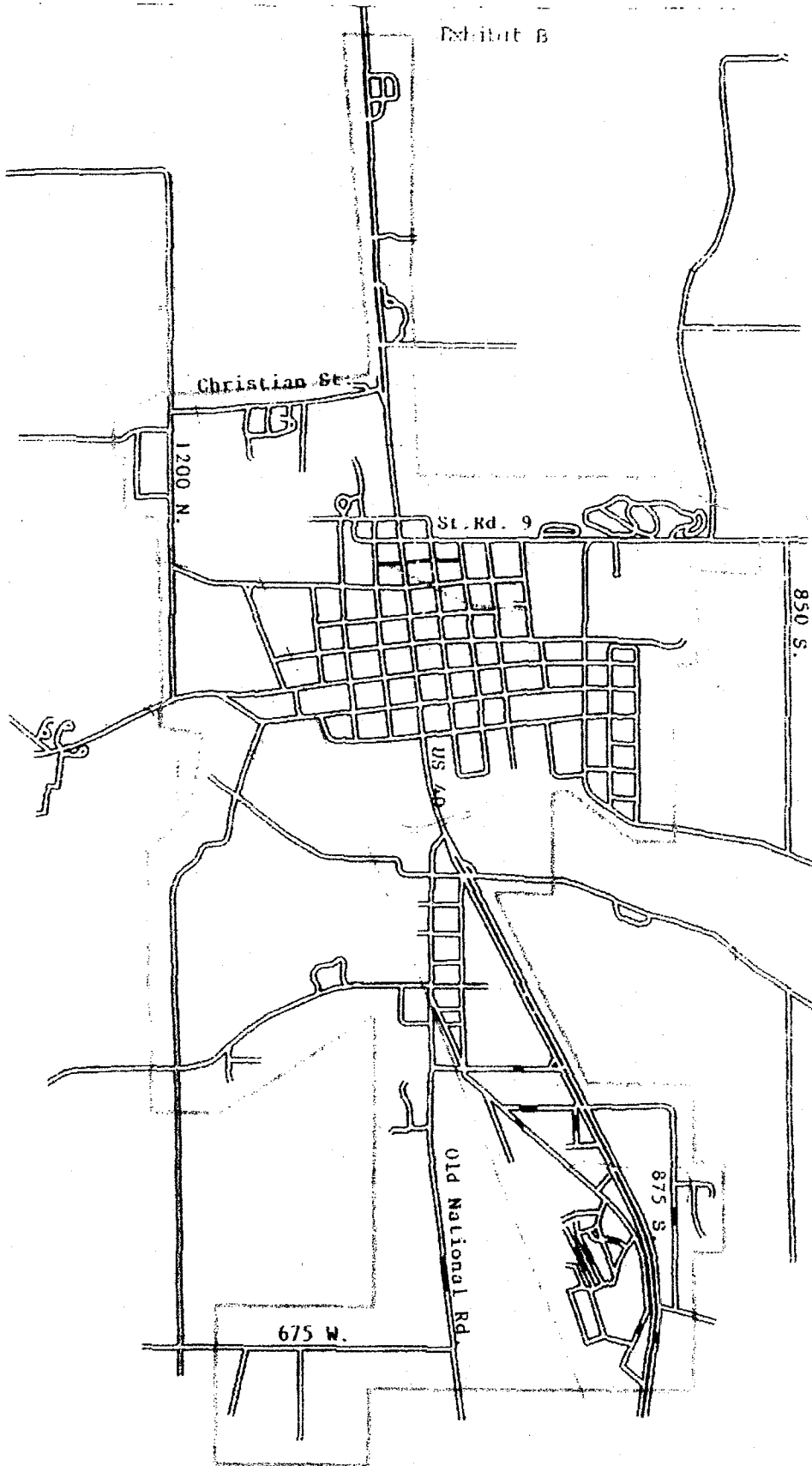
2305

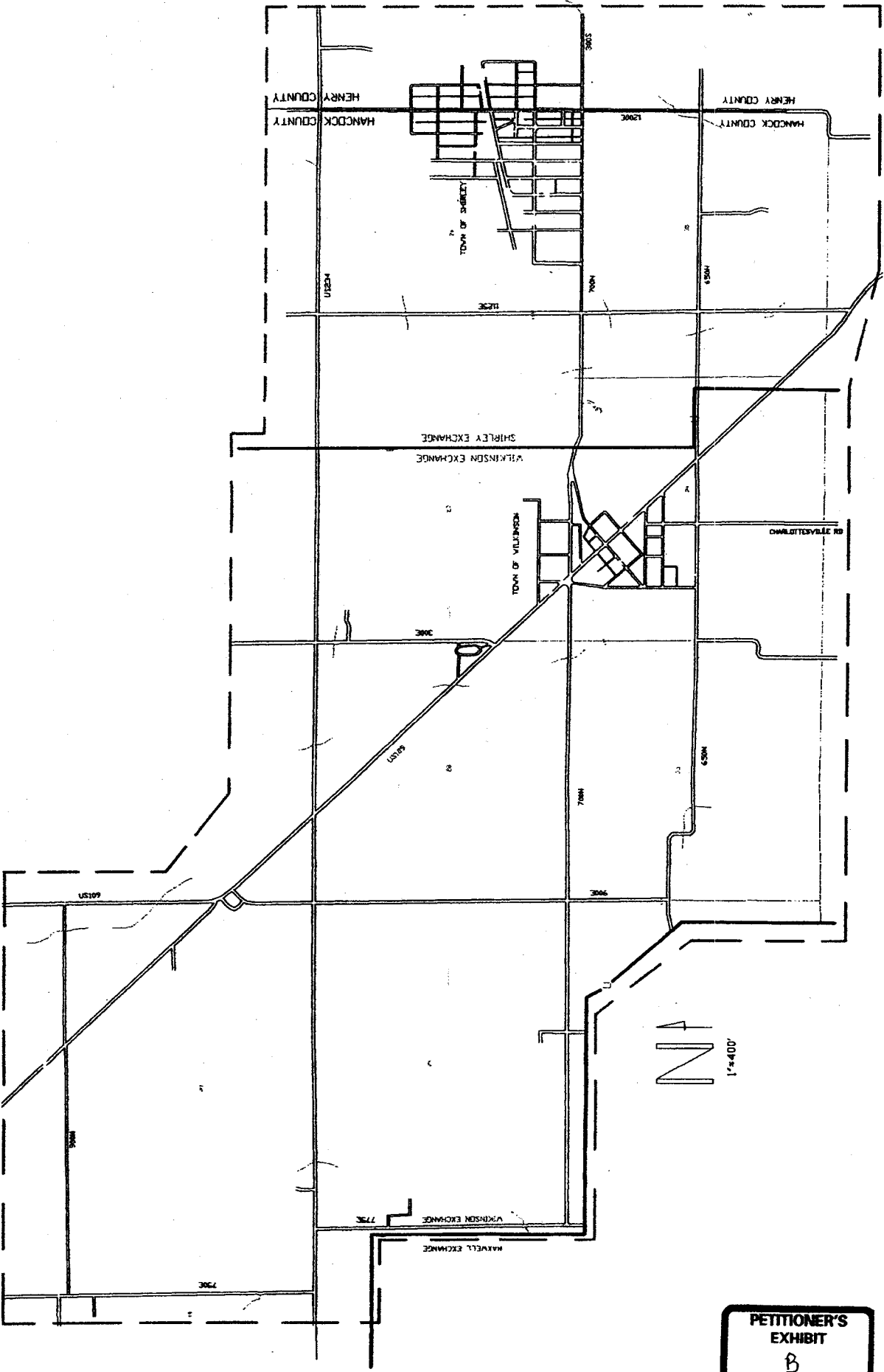
ALL-STATE LEGAL®

EXHIBIT

B

Exhibit B





PETITIONER'S  
EXHIBIT  
B

CERTIFICATE OF SERVICE

I, Linda Braboy, with the law firm of Bennet & Bennet, PLLC, do hereby certify that I have this 12<sup>th</sup> day of January, 2005, had copies of the foregoing **PETITION FOR APPROVAL AND AGREEMENT OF REDEFINITION OF UNITED TELEPHONE COMPANY OF INDIANA, INC.'S SERVICE AREA**” sent via first class mail to the following:

Mr. Larry J. Wallace  
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Mr. Charles R. Mercer, Jr.  
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Ms. Nancy E. Manley  
Secretary to the Commission  
Indiana Utility Regulatory Commission  
302 W. Washington Street  
Suite E-306  
Indianapolis, IN 46024

\_\_\_\_\_/s/  
Linda L. Braboy